

11 JOSEPH MCINERNEY, No C-03-1358 VRW  
12 Plaintiff, ORDER  
13 v  
14 SAN FRANCISCO HOUSING AUTHORITY  
15 et al, Defendant.

18 Plaintiff has filed a complaint against a long list of  
19 defendants alleging a conspiracy to violate a variety of statutes  
20 in the course of evicting him from housing under the authority of  
21 defendant San Francisco Housing Authority (SFHA). Compl (Doc #1).  
22 SFHA moves pursuant to FRCP 12(b) (6) to dismiss the complaint for  
23 failure to state a claim upon which relief can be granted. Doc  
24 #23. The gravamen of the motion is this:

25 [The complaint] appears grounded in a  
26 conspiracy to violate civil rights, and  
27 deprivation of civil rights. But the complaint  
28 is vague and conclusory, and fails to identify  
[SFHA's] role in the conspiracy or deprivation.  
Indeed, McInerney cites numerous statutes and  
amendments, \* \* \* [y]et he fails to describe

how [SFHA] conspired to violate the statutes and amendments, or how it deprived him of any civil rights provided under each.

3 Id at 4-5. The court disagrees that the complaint fails to allege  
4 how SFHA conspired; after all, SFHA was allegedly in charge of  
5 plaintiff's housing at the time he was evicted. But the complaint  
6 does indeed lack allegations establishing how the alleged  
7 conspiracy violated any of the numerous statutory and  
8 constitutional provisions cited by plaintiff.

9 Plaintiff's opposition does little to respond  
10 specifically to this contention. He argues that the allegations of  
11 the complaint "disclose a pattern of wilful misconduct with the  
12 intent to vex and annoy and oppress plaintiff implying collusion  
13 with the objectives of defendant's unlawful eviction of plaintiff."  
14 Pl Opp (Doc #25) at 2-3. While the allegations of the complaint  
15 may establish that SFHA "vex[ed] and annoy[ed] and oppress[ed]"  
16 plaintiff, these are not violations of the law. To the extent  
17 plaintiff seeks to re-litigate the merits of his eviction, the  
18 allegations of the complaint itself signal that such a challenge  
19 would be barred by res judicata. To the extent plaintiff  
20 challenges judicial acts in the eviction proceeding, such a  
21 challenge would be barred by judicial immunity or the Rooker-  
22 Feldman doctrine. Beyond this, there is nothing in the complaint  
23 to establish violations of the statutory and constitutional  
24 provisions that plaintiff cites.

25                   Accordingly, SFHA's motion to dismiss (Doc #25) is  
26 GRANTED. Plaintiff may file an amended complaint not later than  
27 May 31, 2005.

28 One other matter remains: In its order dated February

1 23, 2005 (Doc #21) extending the time under FRCP 4 (m) for plaintiff  
2 to serve his complaint, the court admonished plaintiff that a  
3 failure to serve any defendant by April 15, 2005, would result in  
4 dismissal without prejudice of the complaint as to that defendant.  
5 It appears that only SFHA and the City and County of San Francisco  
6 have been served. Accordingly, the complaint is DISMISSED without  
7 prejudice as to all other defendants.

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IT IS SO ORDERED.

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/s/

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VAUGHN R WALKER

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United States District Chief Judge

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